

MCGRAIL & BENSINGER LLP

Menachem M. Bensinger
888-C 8th Avenue #107
New York, NY 10019
Ph: (718) 434-2676 Fax: (718) 228-7717

March 13, 2016

VIA ECF

The Honorable Gary R. Brown
United States Magistrate Judge
United States Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: 17-cv-850 (LDW)(GRB)

Dear Judge Brown-

We represent Mindy Weiss Party Consultants, Inc. ("**MWPC**"), plaintiff in the above captioned action (the "**Action**"). As your Honor is aware, MWPC and the above captioned defendants (the "**Defendants**") participated in a lengthy settlement conference in your Court on February 5, 2018 (the "**Settlement Conference**"), which culminated in a so-ordered settlement agreement (the "**So-Ordered Settlement**") being placed on the record. As part of the So-Ordered Settlement, the Court, while noting that the "deal was done" regardless as to whether it was ultimately reduced to a writing, ordered the parties to finalize their written expression of the So-Ordered Settlement (with whatever "bells and whistles" the parties and their counsel deemed appropriate) by February 20, 2018, and for the two settlement payments (one to Plaintiff and one to a charity) to be made by March 15, 2018. See generally the transcript of the Settlement Conference, attached hereto as **Exhibit A**.

We write today to inform the Court of a dispute that has arisen between the parties with respect to one provision of the So-Ordered Settlement, and seeking an Order from the Court clarifying such provision.¹

¹ Although the Court required that the written agreement be signed by February 20, MWPC has been unable to comply with this directive, due to lengthy delays caused by Defendants (including due to illness, other professional commitments, and otherwise). MWPC has sent Defendants approximately 14 emails since the Settlement Conference, in which it either requested the documents that Defendants chose to draft, or else sought confirmation that the agreement was final and ready to execute.

By way of background: since the Settlement Conference, the parties' counsel have exchanged and negotiated multiple drafts of a written settlement agreement and general releases. However, on March 7, 15 days *after* the parties were directed to have finalized the written agreement, Defendants raised for the first time a new and unrelated issue: they claimed that MWPC had retained after the wedding (which occurred *almost three years ago*) certain items belonging to the bride and groom, specifically "a set of handmade watercolors, one of each of which was placed on each table at the reception, identifying the table, and in identifying each, naming places that are important to [groom] Peter and [bride] Alex. . . [and] a handwritten seating chart, or map prepared by Alex . . .". See email attached hereto as **Exhibit B**.

In response to this email, MWPC (through counsel) informed Defendants that it did not have these items, and requested, again, that Defendants confirm that the settlement agreement draft MWPC had previously sent Defendants was final and ready for execution. See email attached hereto as **Exhibit C**.

Two days later, on March 9, and in response to the foregoing dialogue regarding the seating cards and seating chart, Defendants surprisingly sent MWPC new drafts of the settlement agreement and releases, in which the bride and groom (Alex and Peter) were *removed* as releasing parties, but *remained* as parties receiving releases. See email attached as **Exhibit D**.

MWPC responded to these drafts with an email stating that either the bride and groom could be parties to the settlement agreement (MWPC's preference), thereby tendering and receiving releases, or else they would need to be removed entirely. But, being the recipient of a release, and not tendering one, was not the settlement. See email attached as **Exhibit E**.

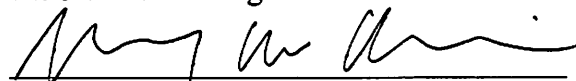
Shockingly, Defendants responded to this email by asserting that the Court's So-Ordered Settlement provides a *one-way* release of Alex and Peter, with them having an option of providing the release back to MWPC. See email attached as **Exhibit F**.

Defendants' position is plain wrong (and bordering on absurd); MWPC never intended to, and did not, release non-parties Alex and Peter unless it received a mutual release as well, and the Court's colloquy with Defendants' counsel clearly shows that the Court's direction and recitation of the settlement was consistent with MWPC's intent. See p. 11 of attached transcript, where the Court noted in discussion with Defendants' counsel that Alex and Peter would be "ill advised not to [tender releases]" and, thereby, not "receive the benefit of the settlement."

We respectfully ask that the Court issue an order clarifying that Alex and Peter Campbell did not receive a one-way release from MWPC in the So-Ordered Settlement. We are available at the Court's convenience to address any questions.

Respectfully,

McGrail & Bensinger LLP



By: Menachem M. Bensinger, Partner

Counsel to Mindy Weiss Party Consultants, Inc.

Cc via email and ECF: Douglas Capuder, Esq., counsel to Defendants

Exhibit A

Transcript

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
MINDY WEISS PARTY : 17-CV-00850-GRB
CONSULTANTS, INC., :
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Central Islip, New York
 :
CARL, et al., : February 5, 2018
Defendants :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT CONFERENCE
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff:

Gabrielle Yvonne Vazquez, Esq.
Menachem Bensinger, Esq.
McGrail & Bensinger LLP
888-C 8th Avenue #107
New York, NY 10019

For the Defendant:

Douglas Capuder, Esq.
Capuder Fazio Giacoia, LLP
90 Broad Street
New York, NY 10004

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
laFerrara44@gmail.com

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

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1 THE CLERK: Calling case 17-CV-850, Mindy Weiss
2 Party Consultants, Inc. v. Carl et al.

3 Counsel, please state your appearance for the
4 record.

5 MS. VAZQUEZ: Good afternoon, your Honor.

6 Gabrielle Vazquez from McGrail & Bensinger LLP,
7 on behalf of the plaintiff.

8 THE COURT: Excellent.

9 MR. BENSINGER: Good afternoon, your Honor.

10 Menachem Bensinger from McGrail & Bensinger on
11 behalf of plaintiff and my client, Mindy Weiss is here
12 with us, as well.

13 THE COURT: Please, thank you. Ms. Weiss, thank
14 you for coming. Counsel, welcome back.

15 Go ahead.

16 MR. CAPUDER: Doug Capuder, your Honor, of
17 Capuder Fazio Giacoia for Mr. and Mrs. Carl and Mr. Carl
18 is with me.

19 THE COURT: Excellent. Mr. Carl, thank you for
20 coming. And the reason I take time to thank the clients
21 for coming is because we are here for a settlement
22 conference and at a settlement conference, I make no
23 decisions. That's right. The only time I get to be not
24 judgmental is today.

25 So the point of this exercise is to see if

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1 there's a decision that you all can reach that will avoid
2 or will be otherwise a long, unpleasant, expensive and
3 risky litigation process that requires you to travel to
4 Central Islip, even when the weather is terrible and even
5 when you don't want to be here.

6 So with that in mind, you might think, gee,
7 that judge, it sounds like he wants us to settle and I
8 do. I think it's smart but not my place to say today.
9 It's up to you.

10 And in that regard, to the extent that --
11 ma'am, are you a lawyer?

12 MS. WEISS: Me?

13 THE COURT: Yes.

14 MS. WEISS: No.

15 THE COURT: Sir, how about you?

16 MR. CARL: Yes, your Honor.

17 THE COURT: You are a lawyer? I

18 MR. CARL: I don't practice but I am trained --

19 THE COURT: Well, all right. Then you need a
20 refresher because it's been a while.

21 MR. CARL: You're right.

22 THE COURT: There's a rule in this book, the
23 Rule of Evidence applies to today and what it says is
24 what we say today cannot be used at the trial. In other
25 words, if we don't settle, you can't go say, you know, at

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1 that settlement conference, he said and she said and the
2 judge -- we don't do that.

3 And the reason we do that, it's a really smart
4 rule, it's to make you feel more comfortable talking, so
5 we can talk through solutions and not worry about every
6 word we say, right, because it's not going to be used
7 against you. It's the opposite of the cop shows you see
8 on TV. You know, everything you say will be used -- it's
9 the opposite, right? It's to make you feel more
10 comfortable not less comfortable, okay?

11 So with that in mind, I would also ask that
12 counsel if it's okay with them, we'll go off the record
13 and I will talk to the sides separately and if there's
14 something you want to share with me, and you don't want
15 me to share it, I'll do my best to honor that commitment,
16 okay?

17 MR. CAPUDER: That's fine, your Honor.

18 THE COURT: Good? You're good with that?

19 MS. VAZQUEZ: Yes. Yes, your Honor.

20 THE COURT: All right. We're going off the
21 record.

22 (Off the record.)

23 THE COURT: All right. We are back on the
24 record. Let the record reflect I have spent an
25 extraordinary amount of time with the parties, discussing

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1 the risks and costs of continued litigation, as compared
2 to the benefits of settling and I am pleased to report
3 that we have a settlement of this matter in principle and
4 I will add before we even go into the details, that I
5 want to commend the parties for their work today. I
6 think everyone did a fine job and I think you managed
7 jointly to take pile of lemons and convert it to
8 lemonade. Right? You made something good out of a
9 touch situation. So thank you for that.

10 So with that said, I am going to sketch out
11 what I understand of the agreement. The agreement
12 involves a resolution of all claims and I've got the
13 lawyers to defendant details to this in a moment. So
14 standby.

15 But it's going to be all claims, all
16 crossclaims, all counterclaims back against the parties
17 who are here and all reasonably related parties, the
18 children and the corporate owners and so forth. We're
19 going to end this. And it's going to be ended for a
20 payment of \$100,000 from the plaintiff -- from the
21 defendant to the plaintiff, sorry.

22 And a \$125,000 donation to a children's cancer
23 hospital. What's the name of the hospital?

24 UNIDENTIFIED SPEAKER: Children's Hospital of
25 L.A.

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1 THE COURT: Children's Hospital of L.A. Again,
2 I think a phenomenal result and I thank you for that.

3 There will be, as I understand it, non-mutual
4 general releases but there will also be a
5 nondisparagement clause which means we won't say bad
6 things about each other and --

7 MR. CAPUDER: No. No, we're -- our view is
8 that the press release stands in place of --

9 THE COURT: Well --

10 MR. CAPUDER: -- a nondisparagement clause
11 because the press release --

12 THE COURT: In place of it.

13 MR. CAPUDER: -- the press release is something
14 that is enforceable and tangible, so --

15 THE COURT: Okay.

16 MR. CAPUDER: -- I would rather not get bogged
17 down into the language of what nondisparagement means.

18 MR. BENSINGER: Your Honor, I think
19 nondisparagement are part of every settlement. I am not
20 sure why that's objectionable.

21 THE COURT: I agree but on the other hand, I
22 will say this. You have agreed to a -- I am going to get
23 into that next -- a press release which is quite detailed
24 as to the parties' position and so forth and irrespective
25 of whether or not there's a nondisparagement clause, it

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1 would be inadvisable for anyone to say anything beyond
2 that, right? So I think either way we're probably going
3 to not talk much about this, is that a fair assumption or
4 is that a bad assumption?

5 MS. VAZQUEZ: Your Honor, I think that's a fair
6 assumption but I don't understand why we wouldn't be able
7 to agree to it, if all parties are in agreement that
8 they're not going to disparage. Let's just get it in the
9 agreement. The press release doesn't cover future
10 communications.

11 MR. CAPUDER: We're concerned about that. It's
12 not an issue that we're willing to agree to. The press
13 release, from our perspective, an adequate way to cover
14 that.

15 MS. VAZQUEZ: What is the concern?

16 MR. CAPUDER: They're unenforceable. They're
17 difficult to police. They raise questions that permit
18 people from responding to inquiries from reporters. It's
19 -- I just think -- this is not something that I've
20 typically done in settlements and I think it's an
21 inappropriate contract provision.

22 MR. BENSINGER: Listen, your Honor, I don't
23 think there's a benefit in me reciting how many
24 settlement agreements I have that have included
25 nondisparagement. This is a consensual settlement and it

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1 has to be something that the parties agree to. I
2 appreciate that.

3 I mean, maybe we can speak for two minutes off
4 the record. Does that make sense? Whatever --

5 THE COURT: Sure. Why don't you go ahead and
6 do that.

7 MR. BENSINGER: Thank you, your Honor.

8 (Off the record)

9 THE COURT: So we are proceeding without a
10 nondisparagement clause. At the risk of asking another
11 question, I will regret, I assume that -- as I think
12 about it, I assume the settlement is -- the terms are not
13 confidential, am I right about that or are we sealing
14 this record? That's the only thing I need to know.

15 MR. CAPUDER: It seems to me the press release
16 says that there's settlement.

17 THE COURT: So you want this sealed.

18 MR. CAPUDER: I don't. I --

19 THE COURT: You don't care.

20 MR. BENSINGER: I --

21 THE COURT: Okay.

22 (Counsel and client confer)

23 THE COURT: I think it's better -- yes? Are
24 you okay with that? That's good because I think I can
25 give you some things that might help both of you in the

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1 future but go ahead.

2 MR. CAPUDER: Can I have just a second?

3 THE COURT: Sure.

4 (Counsel and client confer)

5 MR. CAPUDER: How about this? The parties are
6 free to say, as the press release says, that the matter
7 has been settled in response to inquiries but the terms
8 of the settlement are confidential.

9 THE COURT: Either way, it's up to you. What's
10 your pleasure?

11 (Counsel and client confer)

12 MR. BENSINGER: Well, I don't know how -- so
13 your Honor is proposing to seal the record? I mean
14 that's what the --

15 THE COURT: I --

16 MR. BENSINGER: That would be the --

17 THE COURT: That's the question.

18 MR. BENSINGER: Okay.

19 THE COURT: Generally, I am saying if everyone
20 agrees, I will grant the motion if you want to but you
21 don't have to and it's okay. And if it's not sealed, I
22 have a slightly different way of handling it but it's up
23 to you.

24 (Counsel and client confer)

25 MR. CAPUDER: Your Honor, we're fine with it

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1 not being sealed.

2 THE COURT: Okay, you're good? Yes.

3 MR. CAPUDER: Okay.

4 THE COURT: Then we will continue. All right

5 So I named the payments, the terms. We're
6 going to get this done, I think we said counsel to the
7 extent you're going to work on paperwork, we'll get that
8 done in the next fifteen days and the payments will be
9 made on or before, I think we said March 15th. Did I get
10 that right?

11 MR. CAPUDER: Correct.

12 THE COURT: All right. What other terms would
13 you like to add? And I am going to extend that courtesy
14 to both counsel.

15 MR. CAPUDER: Thank you, Judge. Releases would
16 be from Ms. Weiss and Mindy Weiss, P.C. --

17 THE COURT: Keep your voice up.

18 MR. CAPUDER: -- in favor of Mr. Carl, Mrs.
19 Carl, Peter Campbell and Alex Campbell, the bride and the
20 groom.

21 THE COURT: Okay.

22 MR. CAPUDER: And although I haven't spoken to
23 Alex and Peter, we would have releases in favor of Mindy
24 Weiss personally, Mindy Weiss, P.C. by Mr. Carl and Mrs.
25 Carl and subject to their approval from Alex Campbell and

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1 Peter Campbell.

2 THE COURT: Right. And you can tell them that
3 the judge said they would be ill-advised not to do so,
4 obviously as that would be smart to get the benefit of
5 the settlement.

6 Go ahead.

7 MR. CAPUDER: The settlement would be a full
8 accord and satisfaction of all claims reflected by the
9 pleadings of the plaintiff and the exhibits and there's a
10 representation in warranty by the parties to the action
11 to each other, that they have not assigned any claims
12 against the other.

13 THE COURT: Okay. Is that it?

14 MR. CAPUDER: Yes, sir.

15 THE COURT: Counsel, are there any other terms
16 you needed to add?

17 MR. BENSINGER: I'm sorry, is counsel --

18 THE COURT: Any other terms you wanted to add?

19 MR. BENSINGER: I just wanted to make sure
20 we're clear. We're referring to global general releases
21 from the beginning of the world until the day of the
22 settlement between all the parties, as the Court said and
23 the related that -- children, businesses, whatnot. I
24 think that's what we're --

25 THE COURT: In any form whatsoever.

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1 MR. BENSINGER: The full Blumberg form release.

2 THE COURT: Good.

3 MR. BENSINGER: Okay. So I think we're on the
4 same page, your Honor.

5 THE COURT: Good. All right. Let me add one
6 other issue which -- and again, I will remind the
7 parties, I said this off the record many times, there's
8 no prejudice for not agreeing -- there's no prejudice for
9 not agreeing to a magistrate judge, a double negative
10 contained in the congressional statutes.

11 But if you want to agree to me for handling for
12 all purposes, I can then handle the paperwork for you and
13 if the parties want, either retain jurisdiction over the
14 settlement in case there were any other issues, I am
15 willing to do that. I obviously can't speak for Judge
16 Wexler, whose case is it as of now but if you want to
17 sign this and he signs off, I would be prepared to do
18 that.

19 Is that what we want to do?

20 MR. CAPUDER: Yes, for our side.

21 MR. BENSINGER: Yes, your Honor.

22 THE COURT: All right. Good. So my clerk will
23 pass this around and we'll get your signatures on that
24 and Judge Wexler should sign that because he hasn't given
25 you a trial date. Had he given you a trial date, he

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1 would not let you agree to me to avoid the trial but
2 that's a discussion for another day. All right.

3 So all the principal terms are on the record.
4 Would you slide the mic over to your client, please. Ms.
5 Weiss, I know you've been with us all afternoon into the
6 evening. It's almost 8 o'clock at night and I want to
7 get you out of here but I have to make sure of a couple
8 of things.

9 Do you understand the agreement that's been
10 proposed?

11 MS. WEISS: Yes.

12 THE COURT: Okay. And you recognize, ma'am,
13 that if you accept these terms, meaning you'll get that
14 payment and -- that's the end of the case. There's no
15 more claims. There's no more crossclaims. There's no
16 more suing. There's no more traveling to Central Islip.
17 We're done. That's all they wrote. We're finished. You
18 got that, right?

19 MS. WEISS: Yes.

20 THE COURT: Knowing all of that, do you agree
21 with the settlement?

22 MS. WEISS: Yes.

23 THE COURT: Good. Mr. Carl, I need the mic
24 near by you. Sir, again you've been here all afternoon.
25 You understand all the terms of the settlement. Am I

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1 correct?

2 MR. CARL: Yes, your Honor.

3 THE COURT: And you understand you're releasing
4 your counterclaims, any crossclaims and everything else
5 in exchange for what we've discussed and we're ending
6 this matter. You understand that, right?

7 MR. CARL: Yes.

8 THE COURT: And you knowingly and intentionally
9 agreed to that, is that right, sir?

10 MR. CARL: Yes.

11 THE COURT: Very good. Now in that case --

12 MR. CARL: Your Honor --

13 THE COURT: Sir?

14 MR. CARL: -- I think for the record we should
15 also note that I have spoken to my wife, who is also a
16 plaintiff and she is also --

17 THE COURT: Oh, yes. Yes, thank you.

18 MR. CARL: -- a defendant and -- well,
19 defendant, counterclaim, she has also agreed and she did
20 want me to state to the Court that as you said, turning
21 lemons into lemonade is a result that she is very pleased
22 with and is very happy that this money is going to a good
23 cause and is grateful to Ms. Weiss for agreeing to do
24 something that is a positive good out of all of this. So
25 she asked me to express that gratitude.

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1 THE COURT: Good. And you're authorized to
2 agree on behalf of her, yes?

3 MR. CARL: I am, your Honor.

4 THE COURT: Good. In that case, I find that we
5 have a settlement. All of the principal terms have been
6 placed on the record. The parties have knowingly and
7 intelligently and voluntarily agreed to those terms and
8 entered a settlement agreement.

9 Now the lawyers can and entered a settlement
10 agreement. Now the lawyers can and indeed should
11 memorialize this in a fancy agreement with ribbons and
12 seals and signature and notaries and so forth but even if
13 you don't, we have an agreement as of now. So the matter
14 is settled. All right?

15 What I will ask counsel to do, first of all
16 plaintiff, is once the paperwork is done, the payment is
17 made and so forth, file a notice of discontinuance so we
18 can administratively close the case. But again, assuming
19 Judge Wexler signs off, I have no problem maintaining
20 with jurisdiction particularly because I was so involved
21 in this matter. Now

22 MR. CAPUDER: May I add something to that?

23 THE COURT: Sure, sure, sure.

24 MR. CAPUDER: A stipulation dismissing the
25 action with prejudice.

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1 THE COURT: You can call it whatever you want
2 because right now, we're done today. Right? So but
3 sure, you could call it a stipulation with prejudice.

4 MR. BENSINGER: If it's with prejudice, then we
5 can't bring the claims again though.

6 THE COURT: That's very funny. I like that.
7 Thank you.

8 Now I do want to add one thing more on the
9 record and I do think this is important because I noticed
10 there's a lot of -- there's been a lot of bad feelings
11 here. It's been tough. I will say this. It's 8 o'clock
12 at night. I will stay with parties -- I am happy to stay
13 as late as it takes, as long as it takes. If we're going
14 to settle a case, I will do it.

15 When I say that, I don't really mean it, you
16 know? I mean, I would rather go home at some point but
17 that said, given what the outcome here, the outcome here
18 is extraordinary and I really am happy to do it for that
19 reason. So thank you all for suggesting that idea.

20 Let me also say that these are tough
21 situations. Weddings are very emotional, charged events.
22 There is a lot of things -- and there was a lot of
23 miscommunications, misunderstandings by the parties.
24 There was a lot of things that happened that were
25 unfortunate but let me say, I do think everyone here had

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1 the best of intentions and I think that's particularly
2 recognized by the nature of the settlement where
3 everybody was willing to sort of put their disagreements
4 aside and say, you know what, let's do something good for
5 everyone. So feel good about that. And if that
6 statement helps anybody in the future deal with anything
7 that comes up, I put it out there for those purposes.

8 Anything else we need to do today? Plaintiff

9 MS. VAZQUEZ: No, your Honor.

10 MR. BENSINGER: No, your Honor. Thank you very
11 much.

12 MR. CAPUDER: No, your Honor. Thank you.

13 THE COURT: All right. Thank you, all. Go get
14 some dinner.

15 (Matter concluded)

16 -o0o-

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 14th day of February, 2018.


Linda Ferrara

AAERT CET**D 656

Transcriptions Plus II, Inc.

Exhibit B

March 7 Email from Defendants to MWPC

Menachem M. Bensinger

From: D Capuder <dc@cfgny.com>
Sent: Wednesday, March 07, 2018 5:26 PM
To: Menachem M. Bensinger
Subject: MWPC

Mendy: There are two items Alex wants returned and she tells me she made a point of discussing both items with Mindy and Melissa on several occasions. First, is a set of handmade watercolors, one of each of which was placed on each table at the reception, identifying the table, and in identifying each, naming places that are important to Peter and Alex. Second, is a handwritten seating chart, or map prepared by Alex. Please confirm your client has these items and will return them. Doug

Douglas Capuder
Capuder Fazio Giacoia LLP
90 Broad Street, 18th Floor
New York, New York 10004-2627
v 212 509-9595, fx 212 509-9597

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Exhibit C

March 7 email from MWPC to Defendants

Menachem M. Bensinger

From: Menachem M. Bensinger
Sent: Wednesday, March 07, 2018 7:28 PM
To: D Capuder
Subject: Re: MWPC

Doug, my client does not have these items. Please confirm that we are final on the settlement agreement so we can execute per the Court's order. Thank you.

On Mar 7, 2018, at 5:26 PM, D Capuder <dc@cfgny.com> wrote:

Mendy: There are two items Alex wants returned and she tells me she made a point of discussing both items with Mindy and Melissa on several occasions. First, is a set of handmade watercolors, one of each of which was placed on each table at the reception, identifying the table, and in identifying each, naming places that are important to Peter and Alex. Second, is a handwritten seating chart, or map prepared by Alex. Please confirm your client has these items and will return them. Doug

Douglas Capuder
Capuder Fazio Giacoia LLP
90 Broad Street, 18th Floor
New York, New York 10004-2627
v 212 509-9595, fx 212 509-9597

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Exhibit D

March 9 email from Defendants to MWPC

Menachem M. Bensinger

From: D Capuder <dc@cfgny.com>
Sent: Friday, March 09, 2018 3:49 PM
To: Menachem M. Bensinger
Subject: MWPC
Attachments: !Settlement.K.030918.FINAL.pdf; Exh.A.Stip.Discont.030918.FINAL.pdf;
Exh.B.Release.by.Plf.030918.FINAL.pdf; Exh.C.Release.by.Dft.030918.FINAL.pdf

Mendy:

I am attaching the final settlement documents in form acceptable to my clients. We have not agreed to the cost shifting provision you requested, so there is no para. 13(f) in the settlement agreement. Alex and Peter will not approve signing a release, so I have deleted references to them as releasors. All documents are dated today.

Doug

Douglas Capuder
Capuder Fazio Giacoia LLP
90 Broad Street, 18th Floor
New York, New York 10004-2627
v 212 509-9595, fx 212 509-9597

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Exhibit E

March 12 email from MWPC to Defendants

Menachem M. Bensinger

From: Menachem M. Bensinger
Sent: Monday, March 12, 2018 1:26 PM
To: 'D Capuder'
Cc: Gabrielle Vazquez
Subject: RE: MWPC

Doug-

I hope you had a nice weekend.

As you know, Judge Brown did not *require* (non-parties) Alex and Peter to issue or receive releases, he left it as voluntary (although, in his words, they would be "ill advised not to do so" and, thereby, not "receive the benefit of the settlement" (Tr. P. 11)). I am, like Judge Brown, still in favor of them being included, and, to the extent that they have chosen to exclude themselves due to a concern that Mindy has the items you requested, I understand that all items (any printed table numbers, left over seating cards, etc.) were put on top of the Carls' kitchen counter right off the dining room. Please have them reconsider.

If Alex and Peter refuse, though, then all references to Alex and Peter need to be redacted from the settlement agreement and releases. In other words, either they are part of this settlement (our choice), or not. If not, then (i) MWPC will not be releasing them (so need to delete them from MWPC release), (ii) MWPC will not be releasing the Carls' heirs, to the extent that that would include them (change to MWPC release), (iii) Alex and Peter will not be third party beneficiaries of the settlement agreement (change to settlement agreement), and (iv) the sentence in the press release regarding the bride and groom will need to be deleted (not because Mindy doesn't think they are lovely people; she just can't have anything in these documents suggest that she does not have an issue with them, given that they do not want to give a release) (change to settlement agreement).

Please let me know which way you would prefer to handle this open item, today.

Thank you.

Menachem M. Bensinger, Esq.
McGrail & Bensinger LLP
888-C 8th Ave. #107
New York, NY 10019
Ph: (718) 434-2676
Fax: (718) 228-7717
mbensinger@mcgrailbensinger.com
www.mcgrailbensinger.com

From: D Capuder [<mailto:dc@cfgny.com>]
Sent: Friday, March 09, 2018 3:49 PM
To: Menachem M. Bensinger
Subject: MWPC

Mendy:

I am attaching the final settlement documents in form acceptable to my clients. We have not agreed to the cost shifting provision you requested, so there is no para. 13(f) in the settlement agreement. Alex and Peter will not approve signing a release, so I have deleted references to them as releasors. All documents are dated today.

Doug

Douglas Capuder
Capuder Fazio Giacoia LLP
90 Broad Street, 18th Floor
New York, New York 10004-2627
v 212 509-9595, fx 212 509-9597

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Exhibit F

March 12 email from Defendants to MWPC

Menachem M. Bensinger

From: D Capuder <dc@cfgny.com>
Sent: Monday, March 12, 2018 5:39 PM
To: Menachem M. Bensinger
Cc: Gabrielle Vazquez
Subject: RE: MWPC

Mendy:

Tomorrow I will be prepared to tender the executed agreement, defendants' release and stip as sent to you on Friday, plus the cashier's checks.

We have done all we committed to do. The releases in favor of Alex and Peter and the wording of the press release were always part of our deal. In contrast, we said explicitly that we could not commit Alex and Peter to a release from their end.

Doug

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From: Menachem M. Bensinger <mbensinger@mcgrailbensinger.com>
Sent: Monday, March 12, 2018 1:26 PM
To: D Capuder <dc@cfgny.com>
Cc: Gabrielle Vazquez <GVazquez@mcgrailbensinger.com>
Subject: RE: MWPC

Doug-

I hope you had a nice weekend.

As you know, Judge Brown did not *require* (non-parties) Alex and Peter to issue or receive releases, he left it as voluntary (although, in his words, they would be "ill advised not to do so" and, thereby, not "receive the benefit of the settlement" (Tr. P. 11)). I am, like Judge Brown, still in favor of them being included, and, to the extent that they have chosen to exclude themselves due to a concern that Mindy has the items you requested, I understand that all items (any printed table numbers, left over seating cards, etc.) were put on top of the Carls' kitchen counter right off the dining room. Please have them reconsider.

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